IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:::

ORDER

Mumtaz Begum

vs

State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.3840/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 16th October, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

REPORTABLE

Mr.Rakesh Arora, Advocate, for the petitioner.
Mr.Rameshwar Dave, Dy. Government Advocate for the respondents.

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The petitioner has filed the present writ petition with the prayer that the respondents be directed to grant her the benefit of family pension under Rule 3 of the Rajasthan Agricultural Produce Market Service (Pension) Rules, 1995 (in short the Rules of 1995) and has prayed for a mandamus that fixing the cut off date for the purpose of applicability of the rules, which provides that pension shall be payable to only such of the employees who

are in service of the Mandi Samitis on the date the said rule came into force and who are appointed thereafter, be declared ultra vires.

The petitioner's husband was serving the respondents on the post of Auction Assistant having been so appointed by order dated 15.12.1975. His services were later regularized by order dated 13.8.1981. He was confirmed on the said post w.e.f. 17.12.1976 by yet another order dated 4.2.1982 but unfortunately he expired on 12.3.1991 while serving the respondents. He thus rendered 15 years of service in the employment of the respondents. According to the petitioner, the respondents have in Rule 16 of the Rules of 1995 adopted provisions contained in Chapter XXIII(A) of the Rajasthan Service Rules, 1951 (in short the Rules of 1951),which provides for grant of family pension to the employees of the pensionable establishment of the Government.

The writ petition has been contested by the respondents, who in reply to the writ petition have submitted that late husband of the petitioner was only member of the Contributory Provident Fund Scheme and payment of terminal dues on his sad demise have been made to the petitioner according to the conditions of service applicable to the employees of the Mandi

Samiti under the Rules of 1982. However, the petitioner is not entitled to receive any family pension because family pension is payable only to widow of such employee who was recipient of the pension. There was no scheme of pension when the late husband of the petitioner served and died while serving the respondents. Rule 3 of the Rules of 1995 categorically provided that pension shall be payable to the employees of the Mandi Samiti from the date of enforcement of such rules and to those who were appointed thereafter. Since the Rules were enforced on 21.3.1994 therefore such rules cannot be retrospectively applied.

I have heard Shir Rakesh Arora, learned counsel for the petitioner and Shri Rameshwar Dave, Dy. Government Advocate appearing for the respondents and perused the record.

Shri Rakesh Arora, learned counsel for the petitioner argued that fixing 21.3.1995 as the cut off date was arbitrary and discriminatory inasmuch as there was no difference in so far as nature of service of those who retired/expired before that date and those who were in service of the respondents on the said date. This cut off date has been arbitrarily chosen. According to learned counsel for the petitioner, the husband of the petitioner expired on 12.3.1991, which was an event beyond

her control and if he had lived to this day, he would have been certainly entitled to pension. When the respondents have adopted provisions of Chapter XXIII (A) of RSR in 16 of the Rules of 1995, there was no reason for not extending the benefit of family pension to the petitioner when such future benefit would be available to widow of the retired employee of the respondents.

Learned counsel for the petitioner relied upon a Division Bench judgment of this Court in State of Rajasthan & Ors. Vs. Bhagwan Sahai Pareek reported in 2006 (4) RDD 2122 (Raj.) (DB) and also relied upon the judgments of this Court in Mohan Lal Sharma Vs. State of Rajasthan & Anr. reported in RLW 2004(2) Raj 1050 and in Raj. Parivahan Nigam Karamchari Vs. State of Rajasthan & Ors. reported in RLW 2004(2) Raj. 1056.

On the other hand, Shri Rameshwar Dave, learned Dy. Government Advocate appearing for the respondents argued that there was no provision for grant of pension to the employees of the Krish Upaj Mandi Samitis in the State of Rajasthan prior to the promulgation of the Rules of 1995 on 21.3.1995. Rule 3 of the said Rules categorically provided that pension shall be payable to only such employees who were in service of said Krishi Upaj Mandi Samitis on the date of

notification of the Rules or appointed thereafter. Since the petitioner's late husband unfortunately expired on 12.3.1991, he was not in service of the respondents on that date,he was not a recipient of the pension. Family pension was admissible in the case of only such employee of the samiti who were in receipt of the pension and then expired. Rule 16 of the Rules of 1995 and for that matter Chapter XXIII(A) of RSR cannot be applied to the facts of the present case for the simple reason that the rules of 1995 itself cannot be applied to her case. Learned Dy. Government Advocate argued that any new scheme of the pension is to be applied from a particular date and merely because 21.3.1995 happens to be such date in the present case it cannot be said that this date has been chosen arbitrarily. Those who retired or expired prior to said date and received the benefit of provident fund form a distinct class then those who would be retiring after the aforesaid cut off date. Learned Dy. Government Advocate relied upon the constitutional bench judgment of the Hon'ble Supreme Court in Krishena Kuamr VS. Union of India reported in AIR 1990 SC 1782 and another constitutional bench judgment of the Apex Court in Indian EX-services League and Ors Vs. Union of India reported in AIR 1991 SC 1182. He argued that the judgments relied upon by the learned counsel for the petitioner are distinguishable on facts and therefore they will be of no help to the petitioner.

I have carefully considered the arguments advanced by learned counsel for the parties and perused the record.

Admittedly in the present case, there was no scheme of pension prior to promulgation of Rules of 1995, which was notified on 21.3.1995. According to Rule 3 of the said Rules only such employees who were in service of the Mandi Samiti on the aforesaid date or were employed thereafter were held entitled to pension. The Rule 16 of the Rules of 1995 whereby Chapter XXIII(A) of the RSR has been adopted by way of reference for the purpose of grant of family pension to the members of the family of those who retire from service of the respondents would be applicable only if the Rules of 1995 are themselves held applicable to the case of the petitioner. The petitioner's late husband expired on 12.3.1991 and all terminal dues have been paid to the petitioner by the respondents including the amount of provident fund. At the time when he was serving the respondents and till he expired, the benefit of pension was not available to the employees of the Mandi Samiti. If the respondents decided to provide pension to their employees and for that purpose, enforced the rules of 1995 w.e.f. 21.3.1995 it cannot be said that the said date was chosen arbitrarily. The Division Bench judgment in the case of Bhagwan Sahai Pareek (supra) turned out on its own facts because even though in that

case pension scheme was enforced w.e.f. 1st October, 1987 yet the respondents carved out an exception to the said scheme by notification dated 26th May, 1954 in respect of those employees who were appointed between 1.11.1956 and 1.8.1970 in the Municipalities falling within Ajmer Morhkra Region, which was merged with State of Rajasthan on 1.11.1956 petitioner in that case was originally appointed with the Municipal Board, Vijai Nagar (Ajmer) and was therefore held entitled to pension even by the Government itself.

In other cases cited by learned counsel for the petitioner it has been held that it is a constitutional obligation of the State to grant pensionary benefits as enshrined in directive principles of State Policy and that there was no valid criteria which classifies of employees retiring prior to and after the date on which the pension scheme was applied and on that ground the cut off date was declared as ultra vires. Such conclusion in these judgments in mainly based on the law enunciated by the Hon'ble Supreme Court in D.S. Nakara Vs. UOI (AIR 1983 SC 130). I have to consider this argument of the learned counsel for the petitioner in the light of the law cited before me on behalf of the respondents. The argument before the Hon'ble Supreme Court in Krishena Kumar (supra) was that option given to Provident Fund employee to switch over to the pension scheme with effect

from a specified cut off date would be violative of Article 14 of the Constitution. The Hon'ble Supreme Court held that "pension scheme and P.F. scheme are structurally different" and "P.F. retirees and pension retirees having not belonged to a class, there is no discrimination". Their Lordships in Krishena Kumar case (supra) while repelling a similar argument as is being made in the present writ petition , categorically distinguished the case of D.S. Nakara reported in AIR 1983 SC 130 in para no.30, which is as under: -

> "30. In Nakara (AIR 1983 SC 130) it was never held that both the pension retirees and the P.F. retirees formed a homogeneous class and that any further classification among them would be violative of Art.14. On the other hand the Court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under C.P.F. Scheme to gie the matching contribution beings as soon as his account is opened and ends with his retirement when his rights quo the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of a employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rule governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to P.F. retires. This being the

> legal position the rights of each individual P.F. retiree finally crystallised on his retirement whereafter no continuing obligation remained while, on the other hand, as regards pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the P.F. retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its P.F. retirees must be decided questions. Apart from Art.141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled pointed. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of Court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same Court, or in other Courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara it was never required to be decided that all the retirees formed a class and no further classification was permissible."

This very question came up for consideration of the Hon'ble Supreme Court in another constitutional bench of the Hon'ble Supreme Court in Indian Ex-Services League & Ors. (supra). In this case also, their Lordships held judgment in D.S. Nakara as "one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by

the pension retirees or demand for an indentical amount of pension to every retiree from the same rank irrespective of the date of retirement."

Their Lordships of the Hon'ble Supreme Court in S.R. Sunder VS. G.M., State Bank of Saurashtra reported in RLR 2000(3) 18 held that there is no arbitrariness in fixing the cut off date in Regulation 29(1). In All India Reserve Bank Retired Officers Association Vs. U.O.I. (1992) Suppl.1 SCC 664) when the validity of the introduction of the Pension Scheme in lieu of Contributory Provident Fund Scheme was challenged on the ground that bank employees who retired prior to 1.1.1986 have not been given the benefit of the said scheme, it was held by their Lordships of the Supreme Court that there is no arbitariness in the same.

In Hari Ram Gupta (dead) through L.R. Kasturi Devi Vs. State of U.P. (JT 1998(5) SC 127) it was indicated by the Hon'ble Supreme Court that where a scheme is framed for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut off date, the same can be held to be reasonable and

rational in the light of Article 14 of the Constitution and need not be held to be invalid.

Likewise, V. Kasturi Vs. Managing Director State Bank of India (JT 1998(7) SC 147) was the case wherein their Lordships of the Supreme Court propounded that any beneficial umbrella of new pension scheme which is prospective can not be extended to cover the old retirees non-pensioners. They will remain outside its sweep. In Union of India Vs. Lieut (Mrs.) E. Iacats (JT 1997(7) 279) their Lordships of the Supreme Court held that the respondent cannot claim the benefit of a scheme which came into operation from a date subsequent to the date of her retirement.

In Tamil Nadu Electricity Board Vs. R.Veerasamy JT 1999(2) SC 429 their Lordships of the Supreme Court held that no illegality was committed by the T.N.E. Board in introducing the pension scheme prospectively and the employees retired before 1.7.1986 can not compel the Board to extend the benefit of the newly introduced pension scheme with retrospective effect. The employees after their retirement cease to be employees of the Board and they form a separate class. The employees who retired from service before 1.7.1986 and those who were in employment on the said date cannot be treated

alike as they do not belong to one class.

Prescription of a cut off date for providing benefits of revised pension scheme was challenged in Ramji Lal & Ors. Vs. State of Rajasthan & Anr. Reported in RLR 2002(3) 69. This Court upon consideration of the previous law on the subject held the cut off date to be valid because the consideration in laying down said condition was the financial burden of the State and not any principle of equality.

The cut off date prescribed for providing benefit of pension under Regulation 29(1) of State Bank of Bikaner and Jaipur (Employees) Pension Regulations, 1995 was challenged before this Court in S.R. Sunder Vs. General Manager, State Bank of Saurastra RLR 2000(3) 18. The said rule provide for the benefit of pension scheme to only those who were voluntarily retired on or after first day of November, 1993 and had completed 20 years qualifying service. The petitioner however was allowed to retire voluntarily prior to the said cut off date and was aggrieved by prescription of cut off date for grant of pension. This court after considering the entire previous case law on the subject held as under: -

"prospective introduction of pension on voluntary

> retirement w.e.f. 1.11.1993 by Regulation 29(1) can be held to be reasonable and rational in the light of Article 14 of the Constitution. The petitioner who sought voluntary retirement prior to 1.11.1993 and those who were in employment on the said date can not be treated as they do not belong to one class and beneficial umbrella of pension scheme cannot be extended to cover them. They are not entitled to pension as they sought voluntary retirement prior to 1.11.1993."

Similar question was raised before the Hon'ble Supreme Court in Hari Chand & Ors VS. Faridabad Complex Administration & Ors reported in (2005) 4 SCC 592. In that case, the employees of the Faridabad Municipal Corporation, who retired from service on various dates between 1976 to 1986 being members of the contributory provident funds posed challenged to the similar scheme providing pensionary benefits to the employees for the first time from 16.4.1992. The challenge was made on the ground of equal treatment and that providing cut off date was arbitrary, unreasonable and discriminatory and therefore, violative of Article 14 and 19 of the Constitution of India. In those facts, their Lordships on consideration of earlier judgments on this subject held that retired employees of the corporation were not entitled to pensionary benefits, which was introduced for the first time in April, 1992 and action of the corporation cannot be described as arbitrary, discriminatory or unreasonable. Their Lordships distinguished the judgment of

D.S. Nakara in following terms : -

> "20. In our opinion D.S. Nakara would not apply to the facts of the case inasmuch as it was a case of grant of "revised" pension and was not a "new" scheme. What was observed by this Court was that when a scheme is in existence when a government servant retires and is subsequently revised, it is not open to the Government to arbitrarily "pick and choose" by forming two classes : (1) employees who retire prior to revision of the scheme, and (ii) employees who retire after revision. Since, the scheme was very much operative, benefit of revision ought to be extended to all the employees who were governed by the original scheme and retired prior to revision."

In view of the above discussion, the cut off date provided in Rule 3 of the Rules of 1995 cannot be held to be arbitrary, discriminatory and unreasonable under Article 14 of the Constitution of India and therefore I do not find any merit in this writ petition.

The writ petition being devoid of any merit is hereby dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-